



WISCONSIN SUPREME COURT CALENDAR
November 14, 2002
9:45 a.m.

01-0350-CR State v. Phillip Cole

*This is a certification from the Wisconsin Court of Appeals, District I (headquartered in Milwaukee). This means that the Court of Appeals, rather than issuing its own ruling, asked the Wisconsin Supreme Court to take the case directly. The Court of Appeals certifies cases that cannot be decided by applying current Wisconsin law. The Supreme Court is the state's law-developing court while the Court of Appeals is responsible for correcting errors that occur in the trial court. **This case originated in Milwaukee County Circuit Court, Judge Charles F. Kahn presiding.***

In this case, the Supreme Court will decide whether a Wisconsin law that prohibits carrying a concealed weapon violates the Wisconsin Constitution. Here is the text of the constitutional amendment and the statute:

Wisconsin Constitution, Art. I, §25 [created in November 1998]:

Right to keep and bear arms. The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose.

Wisconsin Statutes, § 941.23:

Carrying concealed weapon. Any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor.

Here is the background: Police making a routine traffic stop found two handguns and marijuana in Phillip Cole's car. In the trial court, Cole argued that he needed the guns for protection and that Wis. Stat. § 941.23 is unconstitutional. The trial judge disagreed and Cole was convicted of carrying a concealed weapon and possessing THC, both misdemeanor offenses. He appealed the weapons conviction and the Court of Appeals, as noted above, asked the Supreme Court to take the case directly.

In this appeal, Cole argues that when the Constitution and a law come into conflict, the Constitution wins. The State does not disagree, but argues that this constitutional amendment does not create an absolute right to bear arms. The State maintains that the use of the phrase "lawful purpose" in the amendment signals that police will have the power to weigh the lawfulness of each situation.

This is not the first time the Supreme Court has interpreted the so-called concealed carry law. In its last term, it ruled in two similar cases. In January, the Court decided a case involving a Milwaukee man whom police found sitting in a car with a gun tucked into the waistband of his pants.¹ The man, who had been a victim of crime in the past, was in a high-crime area at night and claimed that he needed the gun for self-defense. The trial court found that the self-defense claim did not permit the man to carry a concealed weapon and the Supreme Court – over a dissent from Justice William A. Bablitch – agreed, but indicated that its decision was based on the specific facts of that

¹ State v. Tony Nollie, 2002 WI 4

case and should not be interpreted as addressing when, if ever, self-defense might be a lawful reason to carry a concealed weapon.

In June, the Court unanimously ruled that a Kenosha man who was arrested for causing a disturbance in his apartment building and, during a pat-down search, found to be carrying a concealed weapon could not claim that the concealed carry law was unconstitutional.² The Court ruled this way because the constitutional amendment had not been in effect when Nollie was arrested for violating the statute. Again, the justices noted that their ruling should not be interpreted as answering the question of whether the law is constitutional. That question is one that the Court may now answer in this current case.

² State v. Adam Gonzalez, 2002 WI 59